

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7094

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DION THOMAS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (5:00-cr-00176-F; 5:04-cv-00864)

Submitted: October 15, 2007

Decided: November 8, 2007

Before MICHAEL and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Dion Thomas, Appellant Pro Se. Thomas B. Murphy, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dion Thomas seeks to appeal the district court's order denying relief on his motion filed under Fed. R. Civ. P. 60(b)(4), (6). Because Thomas's motion did not directly attack his conviction or sentence, but rather asserted a defect in the collateral review process itself, it constituted a true Rule 60(b) motion under United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). To appeal an order denying a Rule 60(b) motion in a habeas action, Thomas must establish entitlement to a certificate of appealability. See Reid v. Angelone, 369 F.3d 363, 368 (4th Cir. 2004).

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

We have independently reviewed the record and conclude Thomas has not made the requisite showing for a certificate of appealability. Accordingly, we deny his motion to hold his informal brief in abeyance, deny a certificate of appealability,

and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED